HEALTH CARE REFORM/Care Continuity, Elimination of Injunctive Relief

SUBJECT: **Patients' Bill of Rights Act . . . S. 1344. Kerrey amendment No. 1253 to the Wyden amendment No. 1251, as amended, to the Daschle substitute amendment No. 1232.**

ACTION: AMENDMENT REJECTED, 48-52

SYNOPSIS: As introduced, S. 1344, the Patients' Bill of Rights Act, contains the text of S. 6, a health insurance regulation bill proposed by Senator Kennedy and other Democrats. The bill: will regulate the structure and operation of all health insurance products at the Federal level; will impose extensive mandates on consumers, health insurers, and employers; and will create new rights to sue employers and insurers for unlimited compensatory and punitive damages. As estimated by the Congressional Budget Office (CBO), this Democratic plan will cause insurance premiums to rise by an average of 6.1 percent (which will be in addition to any increases from inflation or other causes). The 6.1-percent cost increase, which will total $72 billion over 5 years, will cause approximately 1.8 million Americans to lose their health insurance coverage.

The Daschle substitute amendment would enact some of the provisions of the Patients' Bill of Rights Plus Act (S. 300) as proposed by Republican Members. (Senator Daschle offered the amendment so that Democrats could propose amendments to it). The Republican bill: would enact consumer protections standards for federally regulated health insurance plans; would require all private group health plans to provide a wide range of comparative information about health insurance coverage; would require all private group health plans to have written grievance procedures, internal appeals processes, and independent external appeals processes; would prohibit all private group and individual health plans from denying coverage, adjusting premiums, or adjusting rates based on genetic history or testing; would give self-employed individuals a full tax deduction for their health insurance costs immediately (currently a full deduction is being phased in; the Daschle amendment dropped this reform); and would give every American the option of starting medical savings accounts (MSAs; the Daschle amendment dropped this reform as well). The CBO estimates that the Republican plan would raise premiums an average of .8 percent. However, its net effect would be to increase the total number of insured Americans because it also would give them access to MSAs and would make insurance more affordable

(See other side)

YEAS (48)

Republicans (3 or 6%)	Democrats (45 or 100%)	
Chafee	Akaka	Kennedy
Snowe	Baucus	Kerrey
Specter	Bayh	Kerry
	Biden	Kohl
	Bingaman	Landrieu
	Boxer	Lautenberg
	Breaux	Leahy
	Bryan	Levin
	Byrd	Lieberman
	Cleland	Lincoln
	Conrad	Mikulski
	Daschle	Moynihan
	Dodd	Murray
	Dorgan	Reed
	Durbin	Reid
	Edwards	Robb
	Feingold	Rockefeller
	Feinstein	Sarbanes
	Graham	Schumer
	Harkin	Torricelli
	Hollings	Wellstone
	Inouye	Wyden
	Johnson	

NAYS (52)

Republicans (52 or 94%)		Democrats (0 or 0%)
Abraham	Helms	
Allard	Hutchinson	
Ashcroft	Hutchison	
Bennett	Inhofe	
Bond	Jeffords	
Brownback	Kyl	
Bunning	Lott	
Burns	Lugar	
Campbell	Mack	
Cochran	McCain	
Collins	McConnell	
Coverdell	Murkowski	
Craig	Nickles	
Crapo	Roberts	
DeWine	Roth	
Domenici	Santorum	
Enzi	Sessions	
Fitzgerald	Shelby	
Frist	Smith, Bob (I)	
Gorton	Smith, Gordon	
Gramm	Stevens	
Grams	Thomas	
Grassley	Thompson	
Gregg	Thurmond	
Hagel	Voinovich	
Hatch	Warner	

NOT VOTING (0)

Republicans (0)	Democrats (0)

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

for self-employed Americans.

The Wyden amendment, as amended, would enact the provisions of the Ashcroft amendment (see vote No. 208).

The Kerrey amendment would add provisions on continuity of care. Specifically, it would require federally regulated and State regulated health insurance plans to permit plan participants to continue seeing their health care providers for up to 90 days after those plans terminated their contracts with those providers. Pregnant patients would not be required to change doctors during the course of their pregnancies. Terminally ill patients would not be required to change doctors. Other provisions include that it would eliminate the ability under the Employee Retirement and Income Security Act (ERISA) to award injunctive relief to all of a health plan's participants when injunctive relief was ordered for a particular patient for medical treatment that had been denied.

Those favoring the amendment contended:

The Kerrey amendment provisions on continuity of care are better than the provisions on continuity of care that we just agreed to on the previous amendment. They are better because they apply to plans that are regulated under State law as well as to those plans that are regulated by the Federal Government. In our States, the complaints we have been hearing are from patients who are regulated under State law. Also, though our colleagues say it is not their intent, we believe that their amendment would only give terminally ill patients a 90-day transition period before they would have to pick new doctors. Therefore, this amendment is better and should be adopted.

Those opposing the amendment contended:

The amendment that we just agreed to had a better approach to this issue. Unlike the Kerrey amendment, it did not provide for duplicative regulation by the Federal Government and State governments. States have adopted numerous consumer protection regulations for the group health plans that are under their jurisdiction. In fact, they are well ahead of the Federal Government in this area, and many States have adopted particular regulations to fit their own particular needs that have not been contemplated in any of the health care proposals that have been considered in the Senate this week. Further, States are continually monitoring the health plans under their jurisdiction and are considering new insurance regulations all the time. Looking at what has been done to date, it is much easier to make the claim that States are carefully monitoring their insurance companies than it is to make the claim that the Federal Government is the better regulator. The Federal Government clearly has been much slower than the States in respondi ng to the emerging problems in the managed care industry. Another substantive difference between the Kerrey amendment and the previous amendment's section on the same subject is that the previous amendment would have required the development of a more rationale definition of "terminally ill." At present, a patient is only classified as terminally ill if he or she is expected to die within 90 days. The Kerrey amendment would not require the improvement of the current definition. Yet another major substantive difference is that the Kerrey amendment would inexplicably eliminate the ability of a court to award injunctive relief under ERISA to all of a plan's participants when relief was awarded to one plan participant. We suppose that this provision might help pad the pockets of trial lawyers, because each individual who wanted treatment for that particular benefit would have to go to court to get his or her own personal injunctive relief, but we do not see anyone else profiting from this provision. We personally are not interested in blocking access to medical care, nor are we interested in making trial lawyers wealthier, so we oppose this part of the Kerrey amendment. The final difference between the Kerrey amendment and the amendment we just passed is technical. Our colleagues contend that the wording of the last amendment would prevent terminally ill patients from keeping their same doctors for more than 90 days after those doctors left their plans. However, they and we know that we did not have that intent, and we note that our Democratic colleagues objected to our unanimous consent request to modify the amendment to remove that technical problem. In the final substitute amendment, that technical problem will be fixed. Our colleagues objected to the change because they wished to preserve the misleading perception that the amendment had a 90-day time limit. For them to object to the fix and then to complain that the problem was not fixed is not very constructive, which is the most charitable way we can describe their behavior. In sum, this amendment does not provide a better approach to the continuity-of-care issue, and it inexplicably eliminates a current right of injunctive relief. We urge its rejection.